CAPITAL PUNISHMENT AND LYNCHING.

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The attempt has often been made to prove from the statistics of crime, and of the legal action taken against criminals, that, on the one hand, capital punishment has no deterrent power and, on the other hand, it prevents the enforcement of law because conviction is rare in cases which involve the death penalty. It is obvious, however, to any one who has examined the available statistics of crime and its punishment, that the validity of such statistical conclusions is open to some question.

The plea for the abolition of capital punishment is most effective and conclusive when made, frankly and avowedly, on the ground of humanity and of what may perhaps be properly termed abstract justice. The conviction that capital punishment ought to be abolished has its origin primarily in humanitarian instincts, and the most effective arguments that can be advanced in favor of this action are those that make direct appeal to the humanitarian impulses and sympathies. It is then pointed out that human life is too sacred a thing to permit of its being destroyed as a penalty for any crime whatever. It is argued that two or more men, organized under a form of government, or acting under the authority of a government, have no more right to take human life than one man has. It is murder in either case and brutalizing in both. Furthermore, it is argued that capital punishment prevents reparation in cases of subsequently proven innocence. It is said also that capital punishment is a relic of barbarism. As civilization has advanced, punishment has always become less severe. The old law of retaliation is now obsolete.

But, admitting the strength of this appeal, humanitarian impulses and considerations of abstract justice cannot be accepted as the sole criteria in the formulation of a criminal code. These motives and standards are wisely followed only in conjunction with the modifying influences of existing conditions. A criminal code, to be effective, must be constructed with regard to the circumstances and conditions that prevail within the territory of its application. There is no such thing as a universal criminal code, one that is equally applicable to all parts of the world, to all peoples and to all stages and varieties of civilization. Unless the code of the criminal law is sufficiently adapted to the character and composition of a particular group, to the social and ethical standards of the citizens of a particular country or community, it will prove unenforcable and peculiarly ineffective.

A noteworthy illustration of this fact is to be found in connection with the history of the lynching of negroes in the United States. In the midst of the increased criminality that has been manifested among the negroes since emancipation, the Southern whites have found the law and its administration utterly unsuited to the function of dealing with negro criminals—hence, the frequent adoption of summary and extra-legal methods of punishment.

It was assumed, after the emancipation of the slaves, that a judicial sys-

tem, adapted to a highly civilized and cultured race, would be equally applicable to a race of inferior civilization. It was not then recognized that it is really a serious question whether two races, differing as widely in physical and mental characteristics, in their interests and attainments, as do the negroes and the whites, can occupy the same territory and live side by side in peace and harmony, on terms of equality, under a legal system that has been worked out and established exclusively by the more highly civilized and more cultured race. The failure to recognize this fact, and the failure to make special provision for the control of the negro population during the reconstruction period in the South, constitute the fundamental reasons for the disrepute into which legal procedure has fallen, as regards negroes accused of offenses against the whites.

We are just beginning to realize that if the lynching of negroes is to cease, there must be much less reliance than in the past on abstract principles concerning the rights of man, regardless of his training and his capacity. The great mass of the negroes, the negroes as a race and people, have not the same standards as the whites, either intellectually, morally or industrially. Measured by the white man's standard of judgment, the frequent atrocity of the crimes committed by negroes of low character, without apparently any particular provocation, is something scarcely to be understood—the adjectives wanton, bestial, outrageous, brutal and inhuman, all seem wholly inadequate to express the feeling of utter disgust and abhorrence that is aroused. It is this inability to understand the motives, impulses and characteristics resulting in heinous crimes by negroes, which affords some explanation of the tendency to adopt heinous methods of punishment for the perpetrators of these crimes—such as burning alive with attendant tortures and cruelties. The fact is lost sight of that the colored race in the United States is a child race, in the sense that it is attempting to accomplish, by absorption in the course of a generation or two, all that the white race has been able to develop and establish only after centuries of effort. In the matter of the administration of justice, in cases where negroes are concerned, the line of action followed by the whites in recent years has been similar to that of the unreasonable father, who talks to his child and lays down rules of conduct for him, on the assumption that the child has all the experience and maturity of judgment of an adult, and then punishes him with capricious and savage severity when he disobeys or fails to attain the standard that has been set for him.

Under such circumstances it is not the part of wisdom to abolish capital punishment. The presence of racial contrasts in the population of the United States, particularly that between the negroes and the whites, must not be omitted from consideration in the legal treatment of crime. Experience has shown that it is extremely difficult to secure an invariable observance of due process of law in this country, especially when heinous crimes are committed that cross racial lines. If there be no death penalty that can be invoked by law under such circumstances, it is commonly assumed that there is ample justification for action outside the law.

One instance may be cited where apparently there was a direct connec-

tion between the abolition of capital punishment and recourse to lynchings. The legislature of Colorado, in the year 1897, adopted a measure that abolished capital punishment in that state and provided that every person convicted of murder in the first degree should suffer imprisonment for life at hard labor in the penitentiary. In the year 1900 there were three lynchings in the state, all the victims of which were charged with murder. Two of the victims were negroes. One of these negroes, who was lynched on November 16, 1900, was charged with the assault and murder of a twelve-year-old girl. He was lynched publicly by burning at the stake in the presence of some three hundred citizens, and it was stated that he was brought to the scene of the lynching by the sheriff who had him in custody. The newspapers of Colorado thereupon unitedly made demand that the next legislature pass a bill legalizing capital punishment. The spirit of the demand is expressed in the following: "If that bill had never been repealed, there is a general public opinion that the causes for the various lynchings that have taken place in this state would not have existed."

At the next session of the legislature the act of 1897 was repealed, and it was provided that when a person was found to be guilty of murder in the first degree, the jury, in its verdict, should fix the penalty to be suffered, either at imprisonment for life at hard labor in the penitentiary or at death by hanging. Since 1901, therefore, it has been the law in Colorado that the perpetrator of a heinous crime shall, upon conviction, receive, in the discretion of the jury, either the sentence of death or of life imprisonment. A possible excuse for lynching, on the ground that the guilty person cannot be adequately punished under the law, has thus been removed, and at the same time one frequent objection to the legal infliction of the death penalty has been answered by a provision that no account of the details of the execution shall in any manner be published in the state.

It is not possible in very many cases to show that the repeal of the death penalty has thus directly promoted lynchings. In general, however, the history of lynching in this country furnishes evidence, which may be accepted as fairly conclusive, that for certain crimes, no legal punishment other than ignominious death to the perpetrator, can satisfy the popular sense of justice or receive the effective support of public opinion. So deeply rooted in our American life and spirit has this practice of lynching become, that only a very slight excuse, a mere shadow of a justification, is necessary to induce private citizens to take the law into their own hands under any circumstances which appear to be especially exasperating. In the mind of the average citizen what is conceived to be the enormity of the crime committed and the depravity of the accused completely overshadow all other considerations. To a considerable degree lynchings represent an attempt on the part of private citizens to inflict a penalty that in severity will be proportionate to the heinousness of the crime committed.

In following the lead of the humanitarians, therefore, and in accepting the principle that has been laid down by the penologists, that the penalty must be fitted to the criminal rather than to the crime, it must not be forgotten that the foundation of the law of retaliation is laid deep in human

nature and primitive tradition. It is not too much to say that to abolish capital punishment in this country is likely to provoke lynchings. Whenever unusually brutal and atrocious crimes are committed, particularly if they cross racial lines, nothing less than the death penalty will satisfy the general sense of justice that is to be found in the average American community.

HOMICIDE AND THE DEATH PENALTY IN MEXICO

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In Mexico, as in the United States, each state reserves the right to enact its own penal laws, and in accordance with this constitutional prerogative, the States of Campeche, Yucatan and Puebla long ago abolished the death penalty, a movement followed more recently by the legislators of Nuevo-Leon. It is the general opinion of jurists and criminologists in Mexico that the death penalty is justifiable only under martial law, or when suitable places of detention for criminals are not available.

Comparison of the judicial statistics of the states, wherein the death penalty is abolished with others in which capital punishment is still prescribed, shows that human life is fully as safe in the former as in the latter states. In the state of Campeche (with a population of about 90,000) there were but seventy-one persons convicted of homicide during the fifteen years 1871-85. In Yucatan (with a population of about 393,000) the number of convictions for homicide during the same period was 336. On the basis of the population of 1882, the annual average of convictions for murder and manslaughter in both Yucatan and Campeche was but 5.5 per one hundred thousand of inhabitants. For purposes of comparison, it may be stated in this connection that the annual average of convictions for homicide in the Province and City of Buenos Ayres (where the death penalty has always been enforced), is 11.5 per one hundred thousand of population; in Paraguay, the annual average is 6.1; in Uruguay, 25.5; in Italy, 7.6; in Spain, 5.9 per one hundred thousand of population.

The table below shows the number of convictions for murder and manslaughter in the States of Yucatan and Campeche during the fifteen years 1871-85, given in quinquennial periods, with the annual averages (based on statistical data derived from an official document compiled by Dr. Antonio Peñafiel, and published by the Mexican government in 1890):

	1871–75.	1876–80.	1881–85.	Annual average.
Yucatan	97	129	110	22.6
Campeche	21	21	29	4.1
Annual average in quinquennial periods	19.4	23.8	22.0	.....
	4.2	4.2	5.8	.....

The figures above show that the advance of civilization in Mexico has been attended with a slight increase in the number of convictions for homi-